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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/656,644   | 09/05/2003  | Kerry Charles Broad  | PIP-PT033           | 8109             |
| 3624   | 7590        | 09/12/2005           | EXAMINER            |                  |
| VOLPE AND KOENIG, P.C.<br>UNITED PLAZA, SUITE 1600<br>30 SOUTH 17TH STREET<br>PHILADELPHIA, PA 19103 |             |                      | GARCIA, ERNESTO     |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3679                |                  |

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/656,644

Applicant(s)

BROAD, KERRY CHARLES

Examiner

Ernesto Garcia

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Objections***

Claim 1 is objected to because "preventing" in lines 9 and 10 should follow the change made in line 8, i.e., --that prevents-- or --for-- as previously suggested by the examiner, and "its" in line 14 needs to be defined. Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

### ***Claim Rejections - 35 USC § 102***

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Ellis, 3,865,340 (see marked-up attachment provided in the last Office action).

Regarding claim 1, Ellis discloses, in Figure 1, a collapsible handrail mechanism including an outer stringer **14**, inner stringer **14**, a stanchion **3**, and a latching mechanism **8**. The outer stringer **14** and inner stringer **14** are jointly pivotable about a pivot point **A3**. The stanchion **3** is located between the outer stringer **14** and the inner

stringer **14** and pivotally mounted to the outer stringer **14** or the inner stringer **14**. The stanchion **3** passes through the latching mechanism **8**. The outer stringer **14** or the inner stringer **14** is pivotally mounted at the pivot point **A3**. The latching mechanism **8** has a slide plate **A6**, a top plate **A7**, and a side plate **A8**.

Applicant is reminded that in operation, the stringers will lower the stanchion from a stowed position thereby forcing the stanchion to slide on the slide plate causing the stanchion to pivot about its mounting up into an operation position.

### ***Response to Arguments***

Applicant's arguments filed June 23, 2005 have been fully considered but they are not persuasive.

Applicant has argued that Ellis, 3,865,340, does not show or suggest "a collapsible handrail mechanism for step or a ladder". In response, applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant further argued that the device has nothing to do with a handrail. In response, this argument appears to indicate that Ellis is non-analogous art. Arguments that the alleged anticipatory prior art is 'nonanalogous art' or 'teaches away from the invention' or is not recognized as solving the problem solved by the claimed invention, are not germane to a rejection under section 102. See *Twin Disc, Inc. v. United States*, 231 USPQ 417, 424 (Cl. Ct. 1986) (quoting *In re Self*, 671 F.2d 1344, 213 USPQ 1, 7 (CCPA 1982)).

Applicant further argued that Ellis does not mention a handrail or steps. Applicant should note that a handrail or steps are not recited in the body of the claim.

Applicant argued that Ellis does not show or suggest a stanchion. In response, the term "stanchion" has been given its broadest reasonable interpretation as not all stanchion support a guardrail or handrail. Further, the claims do not require that the stanchion support a guardrail or handrail.

Applicant has also argued that Ellis does not show or suggest "latching mechanism having a slide plate preventing substantial downwards movement of the stanchion, a top plate preventing substantial upwards movement of the stanchion, and a side plate preventing substantial sideways movement of the stanchion". In response, the argument is respectively traversed as the examiner has pointed out these features in the rejection. Applicant further argued that the members of Ellis are specifically made

for rotation and movement in three directions. In response, applicant is reminded that not all members rotate in three dimensions. Only members 14 and 15 rotate in three- dimensions and the rest in one axis (see column 2, line 18-22).

Applicant further argued that Ellis does not show or suggest the limitation "in operation of the handrail mechanism from a stowed position, when the stringers are lowered the stanchion is thereby forced to slide on the slide plate causing the stanchion to pivot about its mounting up into an operational position". In response, it is unclear what structural limitation is argued in this limitation. As far as Ellis is concerned, Ellis discloses all the structural limitations and therefore it is inherent that the operation of the mechanism will function as claimed. In regards to claim 2, since Ellis discloses motion in a single axis, the limitation "pivotally mounted for rotation in a single plane" as arguably presented is inherently anticipated.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



E.G.

September 2, 2005

**DANIEL P. STODOLA**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**



Replacement Sheet

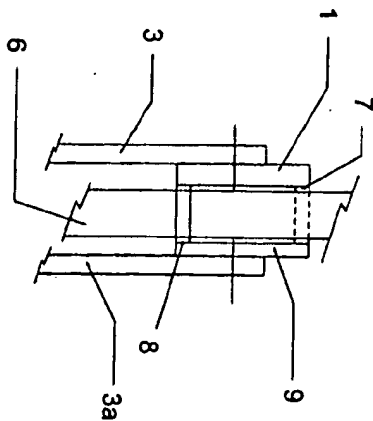


Figure 1a

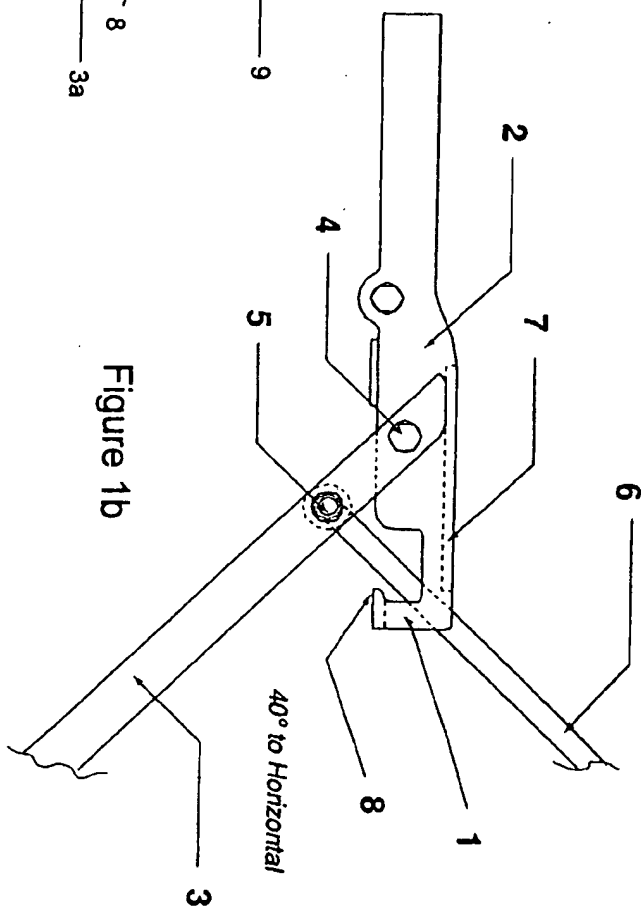


Figure 1b

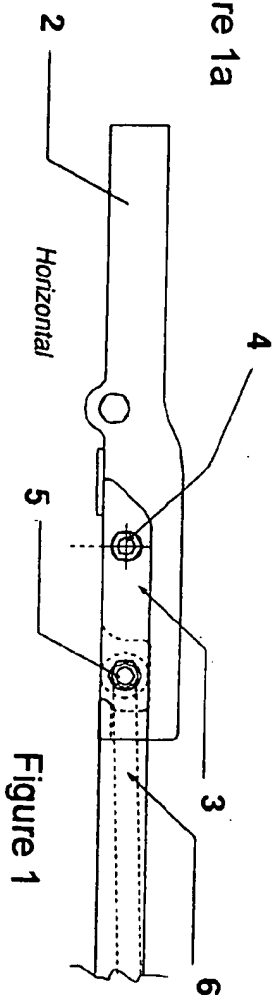


Figure 1

Accepted  
E.L. 9/2/05



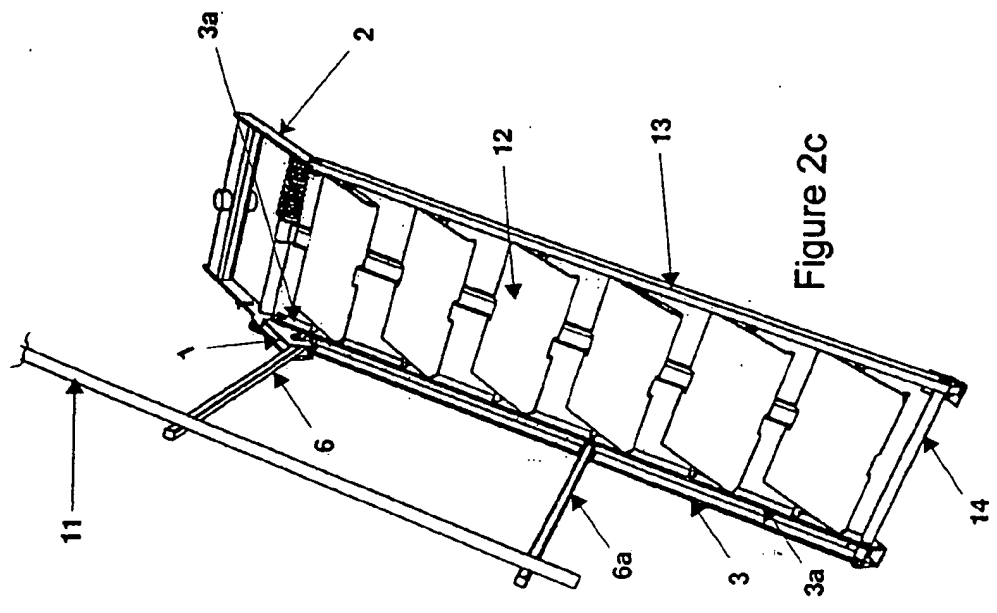


Figure 2c

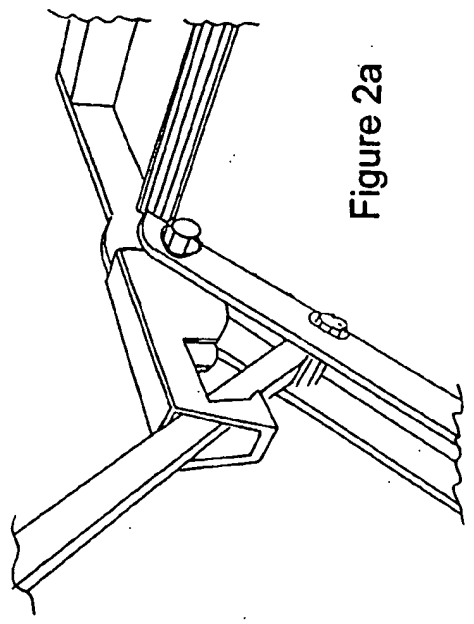


Figure 2a

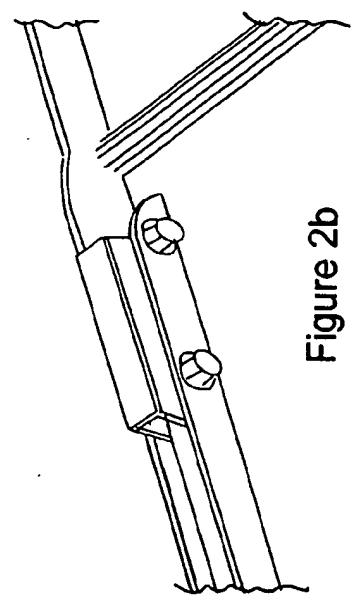
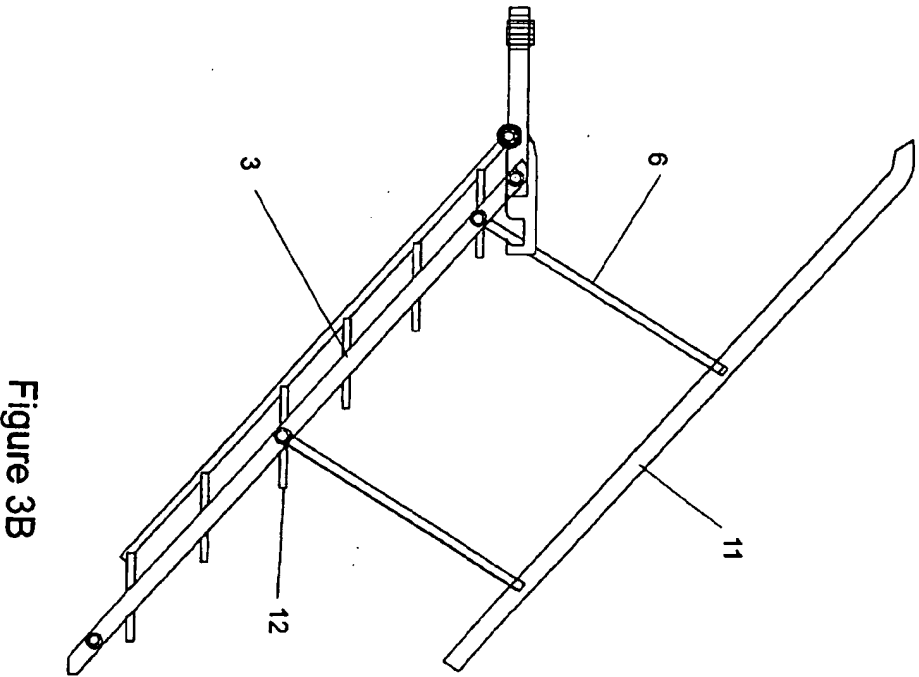
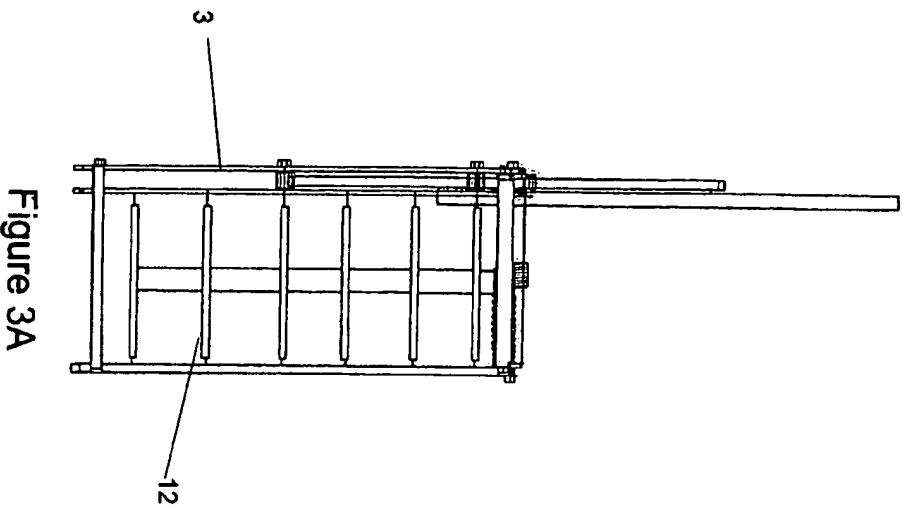


Figure 2b

Replacement Sheet

Accepted  
9/2/05  
EL



Accepted  
C.L. 9/2/05